

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 16, 2001  
at 9:00 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Cecile Tropila, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 214, HB 261, HB 603, HB  
570, 3/13/2001  
Executive Action: HB 560, HB 266

#### **HEARING ON HB 214**

**Sponsor:** REP. JIM SHOCKLEY, HD 61, VICTOR

**Proponents:** Karla Gray, Chief Justice, MT. Supreme Court  
Ken Neil, District Judge, Great Falls  
Larry Johnson, Attorney, Hamilton  
John Greef, President Ravalli County Bar  
Association

**Debra Kaltel, Cascade County Commissioners**  
**SEN. DALE BERRY, SD 30, HAMILTON**  
**Al Smith, MT. Trial Lawyers Association**  
**Chris Tweeten, Chief Counsel Attorney Generals**  
**Office**  
**Karen Sedlock, Program Supervisor, Citizen Review**  
**Boards**

Opponents:           None

Opening Statement by Sponsor:

**REP. JIM SHOCKLEY, HD 61, VICTOR**, handed out a memo **EXHIBIT(jus60a01)** and statistics on cases filed **EXHIBIT(jus60a02)**. He explained the memo and talked about counties and the use of adding judges. He mentioned Cascade County and Ravalli County being effected and how these areas had grown in population and cases being filed.

Proponents' Testimony:

**Karla Gray, Chief Justice, MT. Supreme Court**, said this bill dealt with the needs of people for additional resources. She handed out information regarding the district courts **EXHIBIT(jus60a03)**. She explained how Ravalli County was the busiest county within the state and Cascade County strongly needed assistance also. She mentioned the high case load and how judges needed assistance in working with these cases.

**Ken Neil, District Judge, Great Falls**, handed out a report **EXHIBIT(jus60a04)**. He commented the need for assistance and talked about the statistics. He mentioned the Supreme Court's reporting system and how this system picks up re-opened cases. He was concerned about the impact on the parties involved and the delays with case loads.

**Larry Johnson, Attorney, Hamilton**, referred to the memo from Judge Langton and talked about the budgetary concerns and the number of cases. He asked for support of this bill.

**John Greef, President Ravalli County Bar Association**, explained the population increase within the county and the increase of case load. He felt this bill would assist judges in need of help with cases and would offer support.

**Debra Kaltel, Cascade County Commissioners**, explained the judges need for efficiency. She said with the economic development

increasing, there became a need for another judge in these areas.

**SEN. DALE BERRY, SD 30, HAMILTON**, mentioned the growth in the counties and the increase in demand of another judge to assist with the case load.

**Al Smith, MT. Trial Lawyers Association**, pointed out the constitutional right to uphold a speedy trail for criminals and justice without delay. This bill would be for the people to uphold these rights and the need of another judge to assist with case loads would be beneficial.

**Chris Tweeten, Chief Counsel, Attorney Generals Office**, supported HB 214 for all the reasons the other proponents presented. He believed this to be a stronger bill than when introduced in the House because of the amendments.

**Karen Sedlock, Program Supervisor, Citizen Review Boards**, explained the rising crime rate in Cascade County adding a rise with children in foster care. She said these children must move through the system in a timely manner and this bill should be supported to enable the children to get through the system.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. RIC HOLDEN** referred to the statistics **EXHIBIT (2)**, and asked for information pertaining to other districts for comparison.

**REP. SHOCKLEY** explained data comparable to districts that were not as busy.

**SEN. HOLDEN** asked if the department had statistics. **Karla Gray** said the Supreme Court completed the data collection of all the districts and pointed to **EXHIBIT (3)**.

**SEN. HOLDEN** wanted to know the differences of the average cases filed within districts. He didn't feel he could make a decision on this bill without understanding the statistics better. **Karla Gray** replied she would put together additional information and would make it available. **Ken Neil** said the basis of the statistics deals with each district and there may not be additional information regarding jury trials.

***{Tape 1; Side B}***

**SEN. DUANE GRIMES** asked about the amendments for the new section. **REP. SHOCKLEY** explained the differences in amendments and who would appoint the judges, which is by the Governor.

**SEN. GRIMES** asked if this would effect the fiscal note. **REP. SHOCKLEY** explained the fiscal note would go through January to July 2003. He said once the system begins it would cost around \$125,000.

**SEN. GRIMES** asked what the original fiscal note was. **REP. SHOCKLEY** said he would get the information for the committee.

**SEN. GRIMES** asked if this bill went through House Judiciary or Appropriations. **REP. SHOCKLEY** said it went through appropriations for the changes.

**CHAIRMAN GROSFIELD** asked about the readiness of the construction of the Ravalli County Courthouse. **REP. SHOCKLEY** said the county would have a hard time getting it done in time.

**CHAIRMAN GROSFIELD** asked if the \$125,000 on the fiscal note was per month or year. **REP. SHOCKLEY** said it was per judge per year roughly.

**CHAIRMAN GROSFIELD** said the original fiscal note mentioned year two per judge. **REP. SHOCKLEY** said he was overstating a little.

**SEN. JERRY O'NEIL** asked about Flathead Counties judge increases. **Ken Neil** pointed to the note on the back of the statistic report and explained the per judge average based on present number of judges.

**SEN. O'NEIL** asked if the record could be cleared and he added the counties in northwestern Montana were the hardest working judges in the state. **Ken Neil** said in 1997, Flathead County had the heaviest case load.

**SEN. O'NEIL** asked what help would they need from this committee for Cascade County to be a part of the computerized reporting system. **Karla Gray** said it had taken a period of time to get all districts on the system. She said Cascade County prefers the system they are currently working with.

**SEN. HOLDEN** felt some districts generated more lawsuits than others. He asked why Cascade County should receive more judges to increase more litigation. **Ken Neil** said Cascade County was very active with cases, but he didn't feel the number of judges would make much difference.

**CHAIRMAN GROSFIELD** asked if this bill would be within the budget or not. **REP. SHOCKLEY** answered the Appropriations Committee said yes, it would be within the budget.

**Closing by Sponsor:**

**REP. JIM SHOCKLEY, HD 61, VICTOR**, summarized the need for this bill and stated this bill offers the rights of the people and should be considered for the public. He asked for a do concur motion and support from the committee.

**HEARING ON HB 261**

**Sponsor:** **REP. LARRY JENT, HD 29, BOZEMAN**

**Proponents:** **Joe Faggard, Assistant Attorney General, MT. Dept. of Justice**  
**Jim Hutchinson, Forensics Toxicologist, State Crime Lab, Missoula**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. LARRY JENT, HD 29, BOZEMAN**, addressed the bill and explained the manufacturers of these chemicals and how the possession of equipment and lab was not illegal. He said this bill would recognize the set-up of production for the sale of methamphetamine and the transportation of the drugs and incur penalties. He told the committee how labs could start fires, blow up and endanger the lives involved. He explained the language of enhancement dealing with the penalties for criminal acts. Methamphetamine producers and dealers would sometimes booby trap labs so they would not be caught. These dealers were at risk and put others at risk.

***{Tape 2; Side A}***

**Proponents' Testimony:**

**Joe Faggard, Assistant Attorney General, MT. Dept. of Justice**, said this bill provides increased penalties for people involved with making these drugs and transporting labs. He felt children involved within these homes were in danger. He pointed out how this bill would save time and money for the state.

**Jim Hutchinson, Forensics Toxicologist, State Crime Lab, Missoula**, stated it had become easy for people to go on the

internet or the local store to purchase the chemicals used for these drugs. The toxic chemicals were explosive and very dangerous around the lives of young children and the people involved with making methamphetamines. He pointed out the increase in number of clandestine laboratories over the past couple of years.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. GRIMES** referred to page two and asked about the language change. **REP. JENT** said they did not want to criminalize glass-wear and he defined the possession intent.

**SEN. GRIMES** asked how they proved the possession of chemicals were purposefully and knowingly for the production and manufacturing of dangerous goods. **REP. JENT** said once the chemicals were found they also looked for the glass-wear used. He said they need to look for the flow of money and search where the chemicals had come from.

**SEN. GRIMES** asked if the sponsor was comfortable with the language of the bill. **REP. JENT** said yes, he was comfortable with the language.

**SEN. O'NEIL** explained the situation of a person who lived in an apartment complex where drugs were being made in another apartment. He asked if this bill would help get money out of the person making the drugs. **REP. JENT** said the district judge would order a restitution and would be able to charge the person with criminal mischief for damaging the property.

**SEN. AL BISHOP** asked if a person could have the precursors to making drugs, but use them for something else. **REP. JENT** said he wouldn't know why someone would have precursors to making methamphetamine drugs with an innocent purpose.

**SEN. BISHOP** asked if having those chemicals in one's possession wouldn't make them a criminal. **REP. JENT** said no, it would not.

**SEN. BISHOP** referred to bottom of page two and asked what a laboratory location was. **REP. JENT** explained how people use locations other than their living place to set up a lab. He said the locations were used by the criminals to store their chemicals at.

**SEN. BISHOP** asked if by renting an apartment and someone used it as a laboratory, could they be convicted under this section.

**REP. JENT** said technically yes. He thought it would be hard to prove the case unless the trail was followed.

**Closing by Sponsor:**

**REP. LARRY JENT, HD 29, BOZEMAN**, summarized the need of the bill and enforcing penalties for people making methamphetamines in a laboratory setting. He felt this bill would save money for the state and tools to bust laboratories would be the only expense needed. He urged a do concur motion for this bill.

**HEARING ON HB 603**

**Sponsor:** **REP. JIM SHOCKLEY, HD 61, VICTOR**

**Proponents:** **Chris Tweeten, Chief Counsel Attorney Generals Office**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. JIM SHOCKLEY, HD 61, VICTOR**, stated this bill authorizes any state agency that litigated in an appellate court would have to inform the attorney general. He said if someone was to litigate they should confer with the attorney general, however the attorney general did not control all of the appellate litigation of the state.

**Proponents' Testimony:**

**Chris Tweeten, Chief Counsel Attorney Generals Office**, explained the notification to the attorney general and clarified the relationship between the attorney general and various agency attorneys in the state who handled appellate litigation. He mentioned the existing law was expanded requiring the attorney general to be notified when an appeal was taking place in a state court.

**Opponents' Testimony:** **None**

**Questions from Committee Members and Responses:**

**SEN. HOLDEN** asked if the change required for the departments to notify the attorney general before taking up an appeal. **REP. SHOCKLEY** answered yes, the statute had been drafted to reflect the changes.

*{Tape 2; Side B}*

**SEN. HOLDEN** asked if this bill would provide political fodder for republicans or democrats if the attorney general was one party and the administration was the other. **REP. SHOCKLEY** said there were political implications and if the attorney general found out a state agency was litigating on their own, he or she could complain. He stated this bill was a negotiated agreement between the attorney general and the governor.

**SEN. MIKE HALLIGAN** asked about the necessary provisions within the bill. **Chris Tweeten** answered these provisions allow the attorney general the discretion to determine when the consultation might be requested.

**SEN. STEVE DOHERTY** asked about Subsection 2 dealing with entities appealing to serve notice on the attorney general's office. **Chris Tweeten** said it would certainly be possible, but with initiating a civil lawsuit against the state of Montana or any agency, the plaintiff was required to serve the attorney general.

**SEN. DOHERTY** state they should move the date of approval back to October or July for practitioners. He felt prior notice would need to be given to people. **Chris Tweeten** thought that would be a good suggestion to add.

**SEN. O'NEIL** asked why the attorney must serve the copy to the attorney general. He asked if they could receive a receipt. **REP. SHOCKLEY** answered this bill assisted with providing services through rules of civil procedure.

**SEN. HALLIGAN** asked the similar question if the process could be done by mail. **Chris Tweeten** said service under, the rules of procedure, occurred in two different ways consisting of a complaint copy to be delivered to the party.

**SEN. O'NEIL** asked if this bill would include a party involved in a child support case. **REP. SHOCKLEY** said the bill was designed to cover all situations.

**SEN. GRIMES** asked if there was any opposition to the bill from the House. **REP. SHOCKLEY** didn't believe there was.

**SEN. GRIMES** asked what stage this communication was currently. **REP. SHOCKLEY** said several items caused this bill to come forward and this allowed the attorney general to be aware of another state agency litigating.



**SEN. GRIMES** felt concerned about issues being litigated and how to consult these issues. He asked at what stage did the tax attorneys communicate with the attorney general's office and what change would there be from this bill. **Dave Wodgerd, Chief Counsel, Department of Revenue**, explained the formal requirement change to consult with the attorney general.

**SEN. GRIMES** asked if, with significant litigation, would they have to coordinate with the attorney generals office. **Dave Wodgerd** replied there were many cases the attorney general's office was contacted for the expertise.

**SEN. GRIMES** posed a scenario and asked how, under this bill, they would be consulting on all matters. **Dave Wodgerd** answered, that was correct, they would have to consult on any issue in the appellate court.

**SEN. HOLDEN** asked if an amendment could be added regarding directing litigation. **Chris Tweeten** didn't feel there was a need for the change and the authority to direct was in the bill currently.

**SEN. HOLDEN** felt the state agencies held up the laws already in place and they wouldn't want the attorney general to come in and take control over consulting. **Chris Tweeten** said he wouldn't object to adding an amendment. He added there was an unresolved legal issue in Montana as to what extent the attorney general could step into litigation.

*{Tape 3; Side A}*

**SEN. DOHERTY** asked if the consultation could be as simple as calling up and telling them they were going to file and if there was anything requiring the state agencies to do anything more than consultation. **Chris Tweeten** thought consultation could be different to all parties involved.

**SEN. DOHERTY** asked if there was anything after consultation offering the attorney general to step in and take over the litigation. **Chris Tweeten** said, within this bill, there was nothing.

**SEN. DOHERTY** asked if there were any instances of threats, as outlined in these discussions, that came to reality. **Chris Tweeten** explained one incident that occurred regarding a major dispute over what the agency should do and the attorney general went another route.

**SEN. DOHERTY** asked if the governor at the time of the incident was a Democrat. **Chris Tweeten** answered yes.

**Closing by Sponsor:**

**REP. JIM SHOCKLEY, HD 61, VICTOR**, encouraged the need for this bill and emphasized the language currently in the bill. He explained the changes of the language for clarification.

**HEARING ON HB 570**

**Sponsor:** **REP. JIM SHOCKLEY, HD 61, VICTOR**

**Proponents:** **None**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. JIM SHOCKLEY, HD 61, VICTOR**, stated this bill offered the uses of water within the state and enforced laws. He explained the current Water Use Act and the authority involved. He felt a certain agency shouldn't have the power to veto upon whether the state could proceed against a wrong-doer. He mentioned the provision in the bill for civil penalty against a wrong-doer.

**Proponents' Testimony:** **None**

**Opponents' Testimony:** **None**

**Questions from Committee Members and Responses:**

**SEN. HOLDEN** asked for a further explanation of the bill. **REP. SHOCKLEY** gave an example of a river where he had hunted by to explain the need for the bill further.

**CHAIRMAN GROSFIELD** asked if the Natural Streambed and Land Preservation Act come up with all the permitting process. **REP. SHOCKLEY** thought there was a streambed permit in the example he mentioned.

**CHAIRMAN GROSFIELD** asked if a channelization issue was used. **REP. SHOCKLEY** described the diversion of water and the ongoing problem in the Bitterroot Valley currently.

**CHAIRMAN GROSFIELD** asked about the changes in the bill. **REP. SHOCKLEY** replied the changes were done by the request of the department. He explained the changes of days for negotiations.

**CHAIRMAN GROSFIELD** talked about earmarking and asked how much money the department would be making from this. **REP. SHOCKLEY** answered they seldom litigated over these issues and he didn't think it made much difference.

**CHAIRMAN GROSFIELD** pointed out the bill changing authority from the department and asked if they would be supplementing county general funds with this bill. **REP. SHOCKLEY** felt that local government was supported. He stated if the county was receiving the burden from the litigation, they ought to benefit from it.

**Closing by Sponsor:**

**REP. JIM SHOCKLEY, HD 61, VICTOR**, closed on the bill and explained the changes in the bill and the water usage. He said the existing law made it clear for counties and the county attorney general to enforce the statute to a misdemeanor and it provided the civil penalty to be enforced. It still offered authority in district courts to handle injunctions for a water user to either do or not do something with the state's water. He asked for support of the bill.

*{Tape 3; Side B}*

**EXECUTIVE ACTION ON HB 560**

**Discussion:**

**Valencia Lane, Legislative Staffer**, handed out amendments **EXHIBIT (jus60a05)** and explained the changes in the bill.

**SEN. GRIMES** thought the amendments would improve the bill. He asked if any consideration was given to prorated portion of attorney's fees. **Valencia Lane** said it was the attorney's fees incurred by the adverse party after the party refused to settle causing the party to incur additional costs.

**Motion/Vote:** **SEN. O'NEIL** moved **HB 560 BE AMENDED. Motion carried unanimously.**

**Discussion:**

**SEN. DOHERTY** stated the effective date would change practice. He said more notice to the practitioners should be given. He asked

about the retroactive applicability. **SEN. GRIMES** explained the example given by the sponsor.

**SEN. HOLDEN** felt there would be a problem with the retroactive applicability.

**Substitute Motion:** **SEN. HOLDEN** made a substitute motion to strike the retroactive applicability date and change the effective date to July 1, 2001.

**SEN. O'NEIL** thought it should appear with the new statute rules. He didn't think there should be any effective date.

**Substitute Motion:** **SEN. O'NEIL** made a substitute motion to change **SEN. HOLDEN's** motion from July 1, 2001 to October 1, 2001. This would strike Sections 3 & 4 of the bill.

**SEN. GRIMES** asked what example was used regarding the bill. **Valencia Lane** said she didn't recall the particular case. She believed it was in the federal law, with respect to the retroactive applicability date, which was to not apply to offers made in the past, but to cases on-going.

**SEN. HOLDEN** didn't want to remove the retroactivity clause. **SEN. DOHERTY** said adding the October effective date may be helpful. He wondered what affect the negotiations would have on each party and continuing litigation.

**SEN. HOLDEN** asked **SEN. O'NEIL** to change his substitute motion to include the retroactivity clause as it was presented, but to move the effective date. **SEN. O'NEIL** liked the idea of a retroactive date, but felt people should understand the rules first.

**Vote:** Substitute Motion HB 560 ADDING THE EFFECTIVE DATE OF OCT. 1, 2001 STRIKING SECTION 4 carried unanimously. **Vote:** Substitute Motion HB 560 STRIKING SECTION 3 - RETROACTIVITY DATE. Carries 5-3 with **SEN. HOLDEN**, **SEN. MCNUTT** and **SEN. GRIMES** voting no.

**Motion:** **SEN. O'NEIL** moved HB 560 BE CONCURRED IN AS AMENDED.

**Discussion:**

**SEN. GRIMES** liked the intent of the bill solving the issues of negotiation rather than litigation. He wondered how parties involved were solid in their defense. **SEN. DOHERTY** answered the arguments involve people who bring the lawsuits. He felt the value of settlement was a powerful tool.

**SEN. O'NEIL** stated this bill was a good bill.

**SEN. GRIMES** asked if the defendant was able to give a plea. **Valencia Lane** said the illustration from the sponsor was of the defendant, which was current law. **SEN. GRIMES** said the defendant could make an offer of settlement and this broadened it for any party.

**Vote:** Motion carried 7-1 with **SEN. GRIMES** voting no.

**EXECUTIVE ACTION ON HB 266**

**Discussion:**

**Motion:** **SEN. HOLDEN** moved HB 266 BE AMENDED.

**Valencia Lane** handed out amendments **EXHIBIT(jus60a06)**. She explained the amendments.

**SEN. GRIMES** asked if the amendment took in effect the reciprocal attorney's fees. **Valencia Lane** said it took out the awarded attorney's fees entirely.

**Vote:** Motion carried unanimously.

**Motion/Vote:** **SEN. HOLDEN** moved HB 266 BE CONCURRED IN AS AMENDED. Motion carried 6-3 with **SEN. PEASE**, **SEN. DOHERTY** and **SEN. MCNUTT** voting no.

**ADJOURNMENT**

Adjournment: 11:50 A.M.

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SEN. LORENTS GROSFIELD, Chairman

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CECILE TROPILA, Secretary

LG/CT

**EXHIBIT** (jus60aad)